

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition  
of  
Servair, Inc.

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision  
of a Determination or Refund of Corporation  
Franchise Tax under Article 9A of the Tax Law  
for the Years 1977-1979.

:

:

---

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 23rd day of May, 1985, he served the within notice of decision by certified mail upon Servair, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Servair, Inc.  
1313 Dolley Madison Blvd.  
McLean, VA 22101

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
23rd day of May, 1985.

David Parchuck

Annie A. Hagelund

Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
Servair, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law :  
for the Years 1977-1979. :

---

State of New York :  
ss.:  
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 23rd day of May, 1985, he served the within notice of decision by certified mail upon Samuel A. Spiegel, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Samuel A. Spiegel  
Skadden, Alps, Slate, Meagher & Flom  
919 Third Avenue  
New York, NY 10022

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
23rd day of May, 1985.

David Parchuck

Anna R. Chagelund  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

May 23, 1985

Servair, Inc.  
1313 Dolley Madison Blvd.  
McLean, VA 22101

Gentlemen:

Please take notice of the decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Samuel A. Spiegel  
Skadden, Alps, Slate, Meagher & Flom  
919 Third Avenue  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
SERVAIR, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Years 1977	:	
through 1979.	:	

---

Petitioner, Servair, Inc., 1313 Dolly Madison Boulevard, McLean, Virginia 22101, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1977 through 1979 (File No. 39338).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 17, 1984 at 1:15 P.M. Petitioner appeared by Skadden, Arps, Slate, Meagher & Flom, Esqs. (Samuel A. Spiegel, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Anna Colello, Esq., of counsel).

ISSUE

Whether the Audit Division's disallowance of petitioner's deduction of an amount labelled "fiscal expense" was proper.

FINDINGS OF FACT

1. On May 14, 1982, following a field audit, the Audit Division issued to petitioner, Servair, Inc., three notices of deficiency asserting additional corporation franchise tax due plus interest (accrued to the date of issuance) as follows:

<u>Year</u>	<u>Tax</u>	<u>Interest</u>	<u>Subtotal</u>	<u>(Credit)</u>	<u>Total</u>
1977	\$8,801.00	\$3,671.00	\$12,472.00	(\$ 247.00)	\$12,225.00
1978	8,523.00	2,830.00	11,353.00	( 241.00)	11,112.00
1979	9,316.00	2,129.48	11,445.48	( 4,655.00)	6,790.48

2. The foregoing amounts of tax due have been reduced by payments made on items agreed to and no longer at issue. More specifically, payments of tax due in the respective amounts of \$180.00 for 1977, \$187.00 for 1978 and \$3,873.00 for 1979 have been made, thus reducing the amounts of tax asserted as due to \$8,621.00, \$8,336.00 and \$5,443.00 for such years.<sup>1</sup>

3. Petitioner was incorporated in Delaware in July, 1971, began doing business in New York State in September, 1971 and is primarily engaged in providing services such as baggage handling, cleaning and repairing airplanes, and servicing ground maintenance equipment for various airlines.

4. Petitioner is a wholly-owned subsidiary of Dynalectron Corporation ("Dynalectron"). Dynalectron owns approximately twenty subsidiaries, including petitioner, but is not strictly a holding company, having also several operating divisions in its own right doing predominantly government contracting business.

5. During each of the years at issue, petitioner deducted an amount it labelled as "fiscal expense". Fiscal expense represents the interest expense incurred by Dynalectron on its borrowings (from banks and an insurance company), with the amount of fiscal expense deducted by petitioner representing the share of such interest expense allocated to petitioner by Dynalectron.

---

1 Interest was also paid on the noted agreed amounts of tax. Such interest payments, in the amounts of \$67.00, \$54.00 and \$782.00 for the respective years at issue, when added to the tax payments made for each of such years, equal the respective amounts of credit reflected on the deficiencies (see Finding of Fact "1").

6. The fiscal expense does not represent or relate to any loans made by Dynalectron to petitioner, but rather was an attempt to allocate an additional portion of the cost(s) borne by Dynalectron in providing services to petitioner (and its other subsidiaries). Petitioner likens the allocation of fiscal expense to Dynalectron's allocation, under its centralized cash management system, of other general and administrative expenses ("G & A Expenses") to petitioner and the other subsidiaries.<sup>2</sup> The difference between Dynalectron's total interest expense and its allocated fiscal expense, represents Dynalectron's own (unallocated) interest expense.

7. In general, the method of allocating fiscal expense was based on each subsidiary's total net asset values compared to overall net asset values. Petitioner provided calculations indicating that the method of allocation utilized (comparison of net asset values), resulted in an allocation of fiscal expense reasonably close to that which results if allocation of such expense was based on a comparison of petitioner's allocated G & A Expenses to total G & A Expenses.

8. Petitioner asserts that the fiscal expense allocated during the years at issue represents simply one of the many expenses incurred by Dynalectron on behalf of and for the benefit of its subsidiaries, including petitioner. Petitioner maintains that such expense is and should be allowed in the nature of another type or part of G & A Expense and that to disallow (deductibility of)

---

2 The term "home office expense" was utilized for the other allocated expenses, further subdivided into three categories; to wit "central support services", "group management" and "corporate management".

such amount serves to understate the true cost of the services provided by Dynalelectron and understate the cost therefor which should be borne by petitioner.

9. The Audit Division asserts, by contrast, that where there is no borrowing by the subsidiary from the parent, there is no provision allowing deductibility of any of the interest expense and, further, that to allow such deduction incorrectly reduces the amount of petitioner's income subject to tax by New York State.

#### CONCLUSIONS OF LAW

A. That Tax Law section 211.5 provides, in relevant part, as follows:

"[I]n case it shall appear to the tax commission that any agreement, understanding or arrangement exists between the taxpayer and any other corporation or any person or firm, whereby the activity, business, income or capital of the taxpayer within the state is improperly or inaccurately reflected, the tax commission is authorized and empowered, in its discretion and in such manner as it may determine, to adjust items of income, deductions and capital, and to eliminate assets in computing any allocation percentage provided only that any income directly traceable thereto be also excluded from entire net income, so as equitably to determine the tax...."

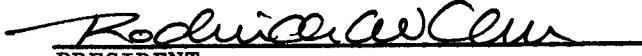
B. That the Audit Division properly disallowed the deduction of fiscal expense allocated to petitioner by its parent Dynalelectron. There has been no showing that such allocation, consisting of a portion of Dynalelectron's cost of borrowing funds (i.e. interest), was based on any indebtedness between the two entities. Moreover, petitioner has failed to show that such allocation to and deduction by petitioner more properly reflects petitioner's income in New York State, or the value of services actually rendered to petitioner by Dynalelectron, or the amount of tax due by petitioner. Petitioner's allegations alone in this regard are insufficient.

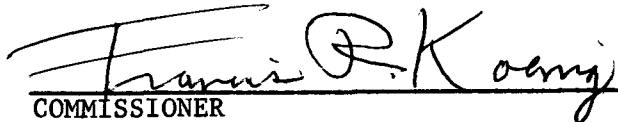
C. That the petition of Servair, Inc. is hereby denied and the notices of deficiency dated May 14, 1982, as reduced by the payments noted in Finding of Fact "2" and footnote "1", supra, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER